IN THE

Supreme Court of the United States

October Term, 1970

No. 325

LOUIS A. NEGRE

v.

STANLEY R. LARSEN, *et al.*

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF AMERICAN JEWISH CONGRESS, *AMICUS CURIAE*

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Other Authorities:

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Interest of the *Amicus*

The American Jewish Congress is a national organization of American Jews, founded more than 50 years ago to protect the religious, civil, political and economic rights of Jews and to promote the principles of democracy. We are especially committed to preservation of the great freedoms secured by the First Amendment. Since the case before the Court raises issues concerning the First Amendment's guaranty of religious liberty and the separation of

church and state, we have sought and obtained the consent of the parties to the submission of this brief *amicus curiae.*

Preliminary Statement

The petitioner, Louis A. Negre, was classified 1A and submitted to induction on August 29, 1967. After receiving training, he was ordered to report to duty in Vietnam. Thereafter his application for discharge as a conscientious objector pursuant to Section 6(j) of the Military Selective Service Act of 1967 (50 U.S.C. App. 456(j)) was denied. In a subsequent application for discharge, Negre asserted that service in Vietnam on his part "would be violating my own concepts of natural law and would be going against all that I had been taught in my religious training." Negre, who was born a Catholic and attended Catholic schools from Grades 1 to 12, cited statements by Catholic authorities in support of his position.

After a hearing on his application, the hearing officer found that there was no doubt that Negre's objection to service in Vietnam was sincere and was based on his religious training. However, since Negre was not conscientiously opposed to all types of war, the officer recommended rejection of his application and it was rejected by the Army Department. After again being ordered to serve in Vietnam, Negre initiated this habeas corpus proceeding. His petition was denied by the District Court which concluded that the Department's finding that Negre did not object to all wars was supported by the record. The Court of Appeals for the Ninth Circuit affirmed.

Question to Which This Brief Is Addressed

This brief is addressed solely to the question whether Congress may constitutionally limit the draft exemption of conscientious objectors to those who are opposed to participation in war in any form.

Constitutional and Statutory Provisions Involved

The First Amendment to the United States Constitution provides in part as follows:

> Congress shall make no law respecting an establishment of religion, * * *

Section 6(j) of the Military Selective Service Act of 1967, 50 U.S.C. App. §456(j) provides, in part, as follows:

> (j) Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. As used in this subsection, the term "religious training and belief" does not include essentially political, sociological, or philosophical views, or a merely personal moral code. * * *

Summary of Argument

The provision in Section 6(j) of the Military Selective Service Act of 1967 limiting the exemption from military service on the basis of conscientious objection to those whose objection is to all wars constitutes preferential treat-

ment of adherents of some religious or ethical systems over others, in violation of the No-Establishment Clause of the First Amendment.

A. This Court has firmly established that the First Amendment requires equality in the treatment of religious groups by the Government. Previous decisions of this Court suggest that, to avoid apparent violation of this principle, the draft law must be construed as according equal treatment to beliefs that are functionally equivalent. In this case, petitioner's objection to service is functionally equivalent to the objections of those who are concededly granted exemption in Section 6(j). Unless the statute is so construed, the Government and the reviewing courts must necessarily become involved in the kind of controversies over religious doctrine from which they are barred by the Constitution.

B. There is no question here that petitioner's objection to service in some but not all wars is based on a sincerely-held set of beliefs derived from his Catholic upbringing. That religious doctrine can prompt such selective objection is hardly open to question. For example, a basis for such objection can clearly be found in the traditions of Judaism.

C. Section 6(j) as construed and applied here has the effect of discriminating among religions. Petitioner should not be required to become a member of those sects that object to all wars in order to have his conscientious objection recognized.

D. The distinction made by the statute among religious groups is unreasonable. It fails to meet the test of compelling governmental interest which has been applied by this Court in passing on challenged limitations on First Amendment freedoms.

ARGUMENT

Limiting exemption from military service on the basis of conscientious objection to those whose objection is to all wars constitutes preferential treatment of adherents of some religious or ethical systems over others in violation of the No-Establishment Clause of the First Amendment.

A. Equality Among Sects

In its oft-cited interpretation of the No-Establishment Clause of the First Amendment in *People ex rel. Everson* v. *Board of Education*, 330 U. S. 1, 15-16 (1947), repeatedly affirmed thereafter,[1] this Court made it clear that "Neither a state nor the Federal Government can * * * prefer one religion over another." This principle was spelled out in the *Schempp* case, *supra*, as follows (347 U. S. at 214):

> Almost a hundred years ago in Minor v. Board of Education of Cincinnati, Judge Alphonso Taft, father of the revered Chief Justice, in an unpublished opinion stated the ideal of our people as to religious freedom as one of "absolute equality before the law, of all religious opinions and sects * * *.

1. *People ex rel. McCollum* v. *Board of Education*, 333 U. S. 203, 210-211 (1948); *McGowan* v. *Maryland*, 366 U. S. 420, 443 (1961); *Torcaso* v. *Watkins*, 367 U. S. 488, 492-493 (1961); *School District of Abington Township, Pa.* v. *Schempp*, 374 U. S. 203, 216 (1963).

In *United States* v. *Seeger*, 326 F. 2d 846 (2d Cir., 1964), affirmed, 380 U. S. 163 (1965), the Court of Appeals for the Second Circuit rested its decision in favor of Seeger expressly on the ground that Section 6(j), as it then stood, unconstitutionally discriminated against those religions that did not include a belief in a Supreme Being. It held that, under this Court's decision in *Torcaso* v. *Watkins, supra*, "Government could not * * * place the power and authority of the state 'on the side of one particular sect of believers.'" 326 F. 2d at 853. Although this Court affirmed that decision on statutory rather than constitutional grounds, nothing in its opinion undermines the validity of the Court of Appeals' conclusion on this point.

The *Seeger* decision, we submit, strongly implies that the Constitution prohibits any interpretation of the draft law which requires a conscientious objector to subscribe to any particular form of theological or doctrinal statement. Seeger was a product of a devout Roman Catholic home and he was a close student of Quaker beliefs, but he declined to subscribe to a belief in an orthodox definition of Supreme Being. This Court held (380 U. S. at 184-185):

> Some theologians, and indeed some examiners, might be tempted to question the existence of the registrant's "Supreme Being" or the truth of his concepts. But these are inquiries foreclosed to Government. * * * Local boards and courts in this sense are not free to reject beliefs because they consider them "incomprehensible." Their task is to decide whether the beliefs professed by a registrant are sincerely held and whether they are, in his own scheme of things, religious.

The Court emphasized that, to avoid constitutional questions, the draft law should be construed to accord equal treatment to beliefs which are functionally equivalent despite differences in doctrinal phrasing or theological statement. It said (at 165-166):

> We believe that under this construction, the test of belief "in relation to a Supreme Being" is whether a given belief that is sincere and meaningful occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God of one who clearly qualified for the exemption.

Here, Negre's objection plainly rested on beliefs occupying a place in his life paralleling the beliefs that qualify for exemption. His conscientious objection rests precisely upon the ground emphasized by the Court, i.e., religious belief that conscience, representing God, has more right to be obeyed than any law contrary to conscience:

> Since the right to command is required by the moral order and has its source in God, it follows that, if civil authorities legislate for or allow anything that is contrary to that order and therefore contrary to the will of God, neither the laws made nor the authorizations granted can be binding on the consciences of the citizens, since God has more right to be obeyed than men. (Pope John XXIII, *Pacem in Terris,* page 142a, April 11, 1963.)

The statutory limitation of the exemption to those who object to "war in any form" has already been cast in doubt. In *Sicurella* v. *United States,* 348 U. S. 385 (1955), a member of the Jehovah's Witnesses was denied classification as a conscientious objector on the recommendations of the

Department of Justice which found (as quoted in this Court's decision, at 388):

> While the registrant may be sincere in the beliefs he has expressed, he has, however, failed to establish that he is opposed to war in any form. As indicated by the statements on his SSS Form No. 150, registrant will fight under some circumstances, namely in defense of his fellow brethren.

This Court, however, upheld the registrant's claim to exemption, saying (at 390-391):

> Granting that these articles picture Jehovah's Witnesses as anti-pacifists, extolling the ancient wars of the Israelites and ready to engage in a "theocratic war" if Jehovah so commands them, and granting that the Jehovah's Witnesses will fight at Armageddon, we do not feel this is enough. The test is not whether the registrant is opposed to all war, but whether he is opposed, on religious grounds, to *participation* in war. [Emphasis in original.] As to theocratic war, petitioner's willingness to fight on the orders of Jehovah is tempered by the fact that, so far as we know, their history records no such command since Biblical times and their theology does not appear to contemplate one in the future.

Crucial to the Court's decision, we believe, was not the Court's passing observation that future theocratic war was not contemplated by the Jehovah's Witnesses but its view that governmental inquiry should cease once the sincere conscientious religious objection to participation in war is ascertained. Probing into the particular objector's understanding of the tenets of his faith would be foreclosed. It is the deeply felt sincerity of the belief and the command of the conscience that is vital, not whether the belief ex-

tends to all wars or can be characterized as "traditional" or "orthodox."

If we are wrong in this, it follows that the decision in *Sicurella* raises constitutional questions of a substantial nature. In effect, it requires draft boards and reviewing courts to base their determinations on the content of the religious views of the registrant. This, indeed, is a fundamental defect of Section 6(j), as here construed. It requires government officials to analyze the nature of the registrant's ethical system to determine the scope of his objection. This necessarily involves the government in "controversies over religious doctrine." *Presbyterian Church, etc.* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U. S. 440, 449 (1969).

This Court itself has had difficulty with such theological questions. *Cf. Church of Jesus Christ of Latter Day Saints* v. *United States*, 136 U. S. 1 (1890); *United States* v. *Ballard*, 322 U. S. 78 (1944). A strong constitutional policy against involvement of civil agencies in the area of theology has been reflected repeatedly in decisions of this Court. *Watson* v. *Jones*, 80 U. S. 679 (1871); *Kedroff* v. *St. Nicholas Cathedral*, 344 U. S. 94 (1952); *Kreshik* v. *St. Nicholas Cathedral*, 363 U. S. 190 (1960); *Presbyterian Church* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church, supra.* As this Court said in *United States* v. *Ballard, supra*, 322 U. S. at 87: "When the triers of fact undertake that task [determination of truth or falsity of religious belief], they enter a forbidden domain."

The burden of our position here is that Section 6(j) enacts an impermissible discrimination among religious

sects. We do not contend that anyone has a constitutional right to exemption from military service because of conscientious objection. We contend only that Congress has drawn an improper distinction as to who may be exempted.

It is sometimes argued that, if selective conscientious objection is permitted, a person who objects to a particular war will be permitted to refuse to pay taxes for its support. The analogy is false because the law does not now waive taxes for conscientious objectors to all wars. It does, however, grant military exemption to such objectors and the issue is whether it may constitutionally limit the exemption in that fashion.

The analogy between objection to military service and objection to the payment of war taxes was made years ago by Justice Cardozo in his concurring opinion in *Hamilton* v. *Regents*, 293 U. S. 245, 268 (1934). In that case, however, the issue was not discrimination between different types of objection but whether students could constitutionally be denied access to a state university because they refused to take military training. Hence, it could there be argued that recognition of a constitutional right to enjoy state benefits free of a requirement of military service would necessarily establish a right to enjoy all state benefits without paying taxes.

We do not believe that that conclusion necessarily follows. There is a vast difference between requiring a man to bear arms and perhaps to kill in violation of his conscience and requiring him to pay taxes for what he regards as wrongful or immoral purposes. In any case, however, Justice Cardozo's argument does not apply in this case,

where the issue is not constitutional right but the constitutional validity of a statutory classification.

B. The Ethical Nature of Selective Objection

The fact that a registrant can be genuinely motivated by his religious beliefs to object to some but not to all wars is hardly open to question. Indeed, it is not disputed here that Negre's objection is based on a sincerely held set of beliefs derived from his Catholic upbringing.

We shall not attempt an extensive demonstration that religious systems do distinguish among wars in deciding whether there is a moral requirement to refrain from participation. In a sense, any such presentation is irrelevant to the issues in this case. Even within the assumption that the statutory exemption is validly limited to religious objectors to all wars, determinations must be made on the basis of the registrant's own religious system, not on whether there is a body of belief officially established by a religious body for all its followers. As this Court said in *Seeger* (380 U. S. at 184), "* * * it must be remembered that in resolving these exemption problems one deals with the beliefs of different individuals who will articulate them in a multitude of ways." However, it is useful to show that there are elements in Jewish law which could rationally persuade some Jews to believe that selective resistance to war is a moral imperative.

Like Catholicism, Judaism is not a religion of traditional pacifism. Indeed, from the conquest of Canaan to the Maccabee wars of religious freedom, from Bar Kochba to the Warsaw Ghetto, and currently in Israel's war against

annihilation and genocide, the history of the Jewish people abounds with instances of wars and battles for survival. Although the people of Israel often proclaimed that they were fighting in God's name the battles of the Lord, the Jewish tradition has in fact distinguished between obligatory and imperative wars of self defense and wars of choice.[2]

However, even when wars were fought for obligatory and imperative reasons, Jewish tradition recognized that killing was an offense before God and a sin offering was required of all soldiers. Indeed, certain strategies were deemed impermissible regardless of the ends sought. Deuteronomy 20 *passim*; Joshua 11:19. Specifically, it is laid down in Deuteronomy 20:19-20, that:

> When in your war against a city you have to besiege it a long time in order to capture it, you must not destroy its trees, wielding an axe against them. You may eat of them, but you must not cut them down. Are trees of the field human to withdraw before you under siege? Only trees which you know do not yield food may be destroyed. * * *

Maimonides declares (Code, Treatise on Kings and Wars, Ch. VIII, Law 7):

> When siege is laid to a city for the purpose of capture, it may not be surrounded on all four sides but only on three in order to give an opportunity to those who would flee to save their lives * * *

2. See Rabbi Seymour Siegel, *Judaism and World Peace: Focus Viet Nam*, Synagogue Council of America (1966), p. 13; Gendler, Everett E., "War and the Jewish Tradition in A Conflict of Loyalties: the Case for the Selective Conscientious Objector," James Finn, ed. (1968).

Jewish law provided for an extensive system of exemptions from military service in all unjust wars, leaving the final determination on what constitutes unjust wars to the individual rather than the community. Viewed historically, Jewish law reflects an early acceptance of the reality of war begetting over the years an increasingly anti-war religious tradition.

One element in the anti-war tradition was Isaiah's prophecy of universal peace (Isaiah 2:4, Micah 4:3); thus, Zachariah 4:6: "Not by might nor by power but by my spirit, saith the Lord of Hosts." (See also: Jeremiah 17:5; Isaiah 30:15, Hosea 1:7.) This prophetic ideal was above all a standard of conduct. Jewish ethics postulates that Jews must not only acknowledge absolutes of perfection, but continuously strive on earth to approach them in action. In this sphere, each Jew must live his life as if the whole world hangs on his deeds. The *Midrash* says (*Leviticus Rabbah,* T3 av IX.9):

> R. Simeon b. Yohai said: Great is peace, since all blessings are comprised therein, as it is written, The Lord will give strength unto His people; the Lord will bless His people with peace (Ps xxix, 11). Hezekiah said two things. Hezekiah said: Great is peace, for in connection with all other precepts it is written, If thou meet, etc. (Ex. xxiii, 4). If thou see (ib. 5), If there chance (Deut. xxii, 6), which implies: if a precept comes to your hand, you are bound to perform it. In this case, however, (it says), Seek peace, and pursue it (Ps. xxxiv, 15), (meaning) seek it for thine own place and follow it to another place.

This, in turn, is further strengthened by specific teachings and laws (*Talmud, Sanhedrin,* 74a):

> In every other law of the Torah, if a man is commanded "transgress and suffer not death" he may transgress and not suffer death, excepting * * * shedding blood. Murder may not be practiced to save one's life. * * * Even as one who came before Raba and said to him, "the Governor of my town has ordered me 'Go, and kill so and so, if not, I will slay thee.'" Raba answered him, "let him rather slay you than that you should commit murder; who knows that your blood is redder? perhaps his blood is redder?"

Midrash Pesikta Rabatti, 21:18, teaches that "The commandment against killing corresponds to the commandment that we believe in God, for man is created in God's image." Similarly, we learn in *Talmud, Mishnah Sanhedrin*, IV, 5, that "One man alone was brought forth at the time of creation, in order to teach us that he who destroys one human soul is regarded as though he had destroyed a whole world, while he who preserves one soul within humanity is regarded as though he had preserved a whole world." According to *Talmud, Avot D'Rabbi Natan B*, pursuit of peace equals all the commandments of the Torah. Similarly, in *Midrash, Sifra*, Rabbi Akiba teaches that "thou shall love thy neighbor as thyself" is the greatest principle in the Jewish ethics, but Rabbi Azzai responds that the sentence, "this is the book of the generations of man" (Genesis 5:1) is even greater.

This distinct current of Jewish anti-war ethic dictated that King David himself was not permitted to build the Temple in Jerusalem because his hands had spilled blood in battle. Precisely at the height of their persecutions, Jews spoke most emphatically of their love of all men, including the foe.[3] From the earliest admonitions of "choose

3. Leo Baeck, *The Essence of Judaism*, 216.

life" (Deuteronomy 30:19) and "blood, it polluteth the land" (Numbers 35:33), to Elijah's discovery of the "still small voice" within him (Kings I, 19:12), the conscience of the Jew within his community is to search, to strive and never to complacently accept his ethical choices as ideal.[4]

Against this background, a majority of Jews remain anti-pacifist, a large segment of American Jewry is selectively pacifist, and a small minority choose total pacifism.[5]

It is the duty of a rabbi to assist in the search for the Jew's "absolute becoming."[6] A rabbi's duty to impart learning, and the duty of every Jew to strive towards ethical perfection, are the most demanding because of the relative dearth of dogmas and absolutes in Judaism; it is an exacting search, all-compelling in its demands.[7]

What matters is not what authority teaches but what the individual believes. "Judaism considers each individual personally responsible before God for his action."[8] As stated by Rabbi Arthur J. Lelyveld:[9]

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4. A. J. Heschel, *God in Search of Man*, 10.

5. See Cronbach, Abraham M., 46 Yearbook of the Central Conference of American Rabbis 198 (1936); Rabbi Maurice N. Eisendrath, *Can Faith Survive*, McGraw & Hill; 16 Tidings of the Jewish Peace Fellowship 3 (1969); "Non-Violence in the Talmud." 17 *Judaism* at 321, et seq., 1968; Rabbi Immanuel Jakobovitz, *Comment on Sanhedrin*.

6. Gershom G. Scholem, *Major Trends in Jewish Mysticism*, 13.

7. "And thou shall love the Lord thy God with all thy heart * * *" Deuteronomy 6:5.

8. Resolution on "Conscientious Objection" adopted by the Commission on Social Justice of the Synagogue Council of America and referred for approval to the Plenum of the Synagogue Council.

9. *Judaism and World Peace*, p. 26.

> In the realm of conscience every individual is in the last analysis alone with the Ribono Shel Olam, the source of Ultimate Demand. In Judaism, the nature of that demand is illuminated by the experience of the group which preserves it and transmits it. Out of our history and our affirmations we have a developed value-stance from which we approach the situations that require decision and from which we test the validity of the ideals that are normative in our tradition.

C. The Discriminatory Effect of Section 6(j)

The effect of Section 6(j), as construed and applied here, is to discriminate on the basis of religious belief among those draft registrants who assert a conscientious objection to service. Those registrants whose religious training dictates objection to service in all wars are exempted; those whose religious training just as compellingly dictates objection to service in a particular war or wars are not.

The petitioner here, like the petitioner in *Sicurella* v. *United States, supra,* follows God's commands over those of man and believes conscience to represent the voice of God. It is true, of course, that Catholics may participate in wars if they believe that such participation is consistent with the commands of God.[10] But the relevant condition in this case for such participation in war is that the Catholic finds participation not contrary to his conscience, for if participation in the war violates the Catholic conscience, Catholic doctrine is clear that the individual Catholic has a

10. We note also that, although Quaker doctrine is said to prohibit discrimination in any way at any time, many Quakers choose to make an exception for wars which they consider particularly just. This concession is even more compelling in its application to Jews.

duty to comply with his conscience and refuse military service. Thus, Catholicism eschews the test of what others may believe and elevates to the level of a dogma the duty of its followers to obey their conscience.

The petitioner should not be required to become a Jehovah's Witness to qualify for discharge from military service, nor should he be required to become a Quaker. The First Amendment, we submit, affords him equal protection in the exercise of his religious belief when—in refusing military service which would violate conscience—his conduct as a Catholic is the same as that of the Jehovah's Witness or the Quaker.

D. The Distinction Made in Section 6(j) Is Unreasonable.

For legislation abridging a liberty secured by the First Amendment a rigorous test is imposed. "The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice." *Thomas* v. *Collins,* 323 U. S. 516, 530 (1945). "Mere legislative preference for one rather than another means for combating substantive evils, therefore, may well prove an inadequate foundation on which to rest regulations which are aimed at or in their operation diminish the effective exercise of rights so necessary to the maintenance of democratic institutions." *Thornhill* v. *Alabama,* 310 U. S. 88, 95-96 (1940); *Sherbert* v. *Verner,* 374 U. S. 398, 406 (1963). See also *West Virginia State Board of Education* v. *Barnette,* 319 U. S. 624, 639 (1943).

This Court recently had occasion to make clear that this approach applies generally to all fundamental constitu-

tional rights. In *Shapiro* v. *Thompson*, 394 U. S. 618 (1969), it rejected reasonable considerations of convenience in invalidating state laws limiting welfare benefits to persons who had resided a minimum length of time within the state. After referring to the holding in *United States* v. *Guest*, 383 U. S. 745 (1966) that the right to travel among the states "occupies a position fundamental to the concept of our Federal Union" (at 630), this Court said (at 634):

> At the outset, we reject appellants' argument that a mere showing of a rational relationship between the waiting period and these four admittedly permissible state objectives will suffice to justify the classification * * * [A]ny classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a *compelling* governmental interest, is unconstitutional. (Emphasis in original.)

The *Torcaso* case, *supra*, provides an example of the application of this approach. Absent the First Amendment, it could not be said that the state's apparent determination there that believers in God are likely to be more honest and conscientious civil servants than nonbelievers was arbitrary and unreasonable. Indeed, the state there argued that it could hardly be deemed unreasonable to require that a notary public (the office involved in that case) who is given the power to administer oaths himself believe in God. Brief for Appellee in *Torcaso* (October Term 1960, No. 373), p. 19. As noted by the Court in *Sherbert* v. *Verner*, *supra*, 374 U. S. at 410n, there was in *Torcaso* "an undoubted state interest in ensuring the veracity and trustworthiness of Notaries Public." But the answer, as *Torcaso* makes clear, is that there are certain classifications which the First Amendment forbids government to make,

irrespective of their possible factual reasonableness, and one of these is a classification which distinguishes among religions.

The Sunday Law cases, and specifically *Gallagher* v. *Crown Kosher Market*, 366 U. S. 617 (1961), and *Braunfeld* v. *Brown*, 366 U. S. 599 (1961),[11] are not inconsistent with this assertion. The Court there held that Sunday laws are today secular laws for the purpose of ensuring a uniform day of rest, and that the states are not constitutionally required to accord exemptions for religious reasons. But nothing in the Court's decision can be interpreted to give any support to an argument that the states could constitutionally exempt adherents of certain non-Christian religions from the operation of the statute while withholding the exemption from adherents of other faiths. We are confident that this Court would not uphold a statutory exemption to Sunday laws in favor of only those who observe Saturday as their holy day of rest but deny it to those who, with equal religious sincerity, observe Friday as their holy day of rest. Nor, we suggest, would the unconstitutionality of such a classification be mitigated by a not unreasonable state finding that policing problems would be much more difficult if the exemption were not limited to a single, specific day.

Nor can *Torcaso* be distinguished because in the present case the governmental interest involved is national defense. The interest of national defense might justify a refusal by Congress to grant any exemption from military service on grounds of conscience. *United States* v.

11. We suggest that the force of these decisions has been substantially weakened by *Sherbert* v. *Verner*, *supra*.

Macintosh, 283 U. S. 605, 623-624 (1931); *Hamilton* v. *Regents of the University of California*, 293 U. S. 245, 263-265 (1934); *In re Summers*, 325 U. S. 561, 571-573 (1945). But, we submit, nothing in those decisions supports the conclusion that, once Congress has elected to grant exemption to those who conscientiously object to military service, it can limit that exemption to those who object to all wars, excluding those who object, just as sincerely, to a specific war or wars.

There was a time when assertion of the needs of national defense almost foreclosed all further judicial inquiry and freed government from the restraints imposed by the Bill of Rights. *Cf. Abrams* v. *United States*, 250 U. S. 616 (1919); *Hirabayashi* v. *United States*, 320 U. S. 81 (1943); *Korematsu* v. *United States*, 323 U. S. 214 (1944). Fortunately, that time has passed and hopefully will not return. *Cf. West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624 (1943); *Ex parte Endo*, 323 U. S. 283 (1944); *Harmon* v. *Brucker*, 355 U. S. 579 (1958); *Kennedy* v. *Mendoza-Martinez*, 372 U. S. 144 (1963).

We submit that no "*compelling* national interest" justifies the distinction among religions made by Section 6(j) as applied here. We do not believe that any claim can be made that administration of the draft laws requires exclusion of selective conscientious objectors from exemption. There is no reason to believe that it is peculiarly difficult to pass upon the validity of assertions of selective objection. Indeed, a far more compelling case of a risk of abuse of the exemption provisions was made, and found less than compelling by this Court, in the *Seeger* case and in *Welsh*

v. *United States*, 90 S. Ct. 1792 (1970). The vague formulas as to "religious" belief which were found acceptable by this Court in those cases were far less well documented than Negre's claim to religious objection to a specific war.

Conclusion

In the spirit of the Jewish tradition of respect for the dictates of the individual human conscience, we respectfully urge this Court to construe Section 6(j) of the Military Selective Service Act of 1967 as permitting military discharge for the Catholic who in conscience cannot participate in a particular war.

Respectfully submitted,

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